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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,784	06/24/2003	Basil C. Linton	ITW-13971	1672

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OSTRAGER CHONG FLAHERTY & BROITMAN PC
250 PARK AVENUE, SUITE 825
NEW YORK, NY 10177

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,784

Applicant(s)

LINTON ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 27-33 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 27-33 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on March 25, 2005. These drawings are approved in part. The corrections to figure 3 is accepted. The changes to figure 1 introduces new matter since there is no support in the disclosure as originally filed to depict the slits with having the orientation illustrated. In fact, there is no disclosure for any length or orientation of the slits. Figure 1 is not approved.

2. In order to avoid abandonment, the drawing informalities noted in paragraphs 3 and 4 (relating to the slits) in the paper mailed on December 16, 2004, must now be corrected. Correction can only be effected in the manner set forth in the above noted paper.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-12 and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnell (US 5,851,071) in view of Price (US 6,213,641).

Arnell teaches the claimed bag, including a non-reclosable string zipper **18** at the bottom of the bag and a reclosable zipper **16** at the top edge of the bag, except is silent regarding a slider and the reclosable zipper being a string zipper.

Price teaches it is known to utilize a reclosable fastener with or without a slider (col. 4, lines 2 and 3). Figure 5 depicts a flangeless, reclosable zipper having a slider.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a slider to the reclosable bag of Arnell and to make the reclosable zipper a string zipper as taught by the non-reclosable sting zipper **18** of Arnell. Doing so provides a bag having fewer manufacturing steps and an easier opening and closing arrangement. Wherein the modified reclosable zipper of Arnell would be a string sipper

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attached to the bag panels, the structure would inherently meet the newly added claim limitations regarding the location of the zipper part backs, bag panels, and the slider.

Regarding the slits, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the slits for the holes of Arnell since the examiner takes Official Notice of the equivalence of slits and holes for their use in the bag art and the selection of any of these known equivalents to allow a bag to hang would be within the level of ordinary skill in the art. Additionally, applicant's failure to traverse this rejection is considered admitted prior art.

Regarding the spaced perforations, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute perforations for a score line since the examiner takes Official Notice of the equivalence of perforations and a score line for their use in the bag art and the selection of any of these known equivalents to allow for separation of one bag part from another would be within the level of ordinary skill in the art. Additionally, applicant's failure to traverse this rejection is considered admitted prior art.

Response to Arguments

5. Applicant's arguments filed March 25, 2005 have been fully considered but they are not persuasive.

In the response filed March 25, 2005, applicant did not traverse the examiner's assertion of official notice with regard to the equivalence of slits and holes and the equivalence of perforations and a score line for their use in the bag art. Thus, the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant failed to traverse the examiner's assertion of official notice.

Regarding applicant's statement that the patent to Arnell was misinterpreted, it is acknowledged that the previous Office action did not clearly indicate there is non-specific disclosure to the type of zipper, i.e., the reclosable zipper 16, found at the top of the package.

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The teachings found in the prior art reference are quite clear and understood by the examiner.

Rather, applicant misinterpreted the rejection.

Regarding applicant's remarks directed to the disclosure of Arnell at page 13, paragraphs 1 and 2 of the response, the patent teaches throughout, except at column 4, paragraph 4, that " a plastic zipper [is] disposed along the top edges of the front and rear walls" (claim 1, subparagraph (b)). The disclosure at column 4, paragraph 4 appears to be drawn to a non-illustrated embodiment. Thus, no "generous reading" is necessary as asserted by applicant.

Further, it has been well established that patent drawings can be used for their teaching. It has been established that "the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art". *In re Wright*, 569 F.2d 1124,193. Thus, the description of figure 1 at column 3, lines 13-17 as well as claim 1 clearly set forth a reclosable zipper 16 at the top edge of the bag panels 12 and 14.

Regarding the last paragraph on page 13 of the response, the disclosure of Arnell clearly indicates the zipper 16 is reclosable. The disclosure of Price clearly sets forth zippers can be used with or without sliders. One of ordinary skill in the art would combine these two references to render the claimed invention obvious without the necessity for a "generous reading" of the prior art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

8. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
June 1, 2005



Robin A. Hylton
Primary Examiner
GAU 3727

1/6

not approved

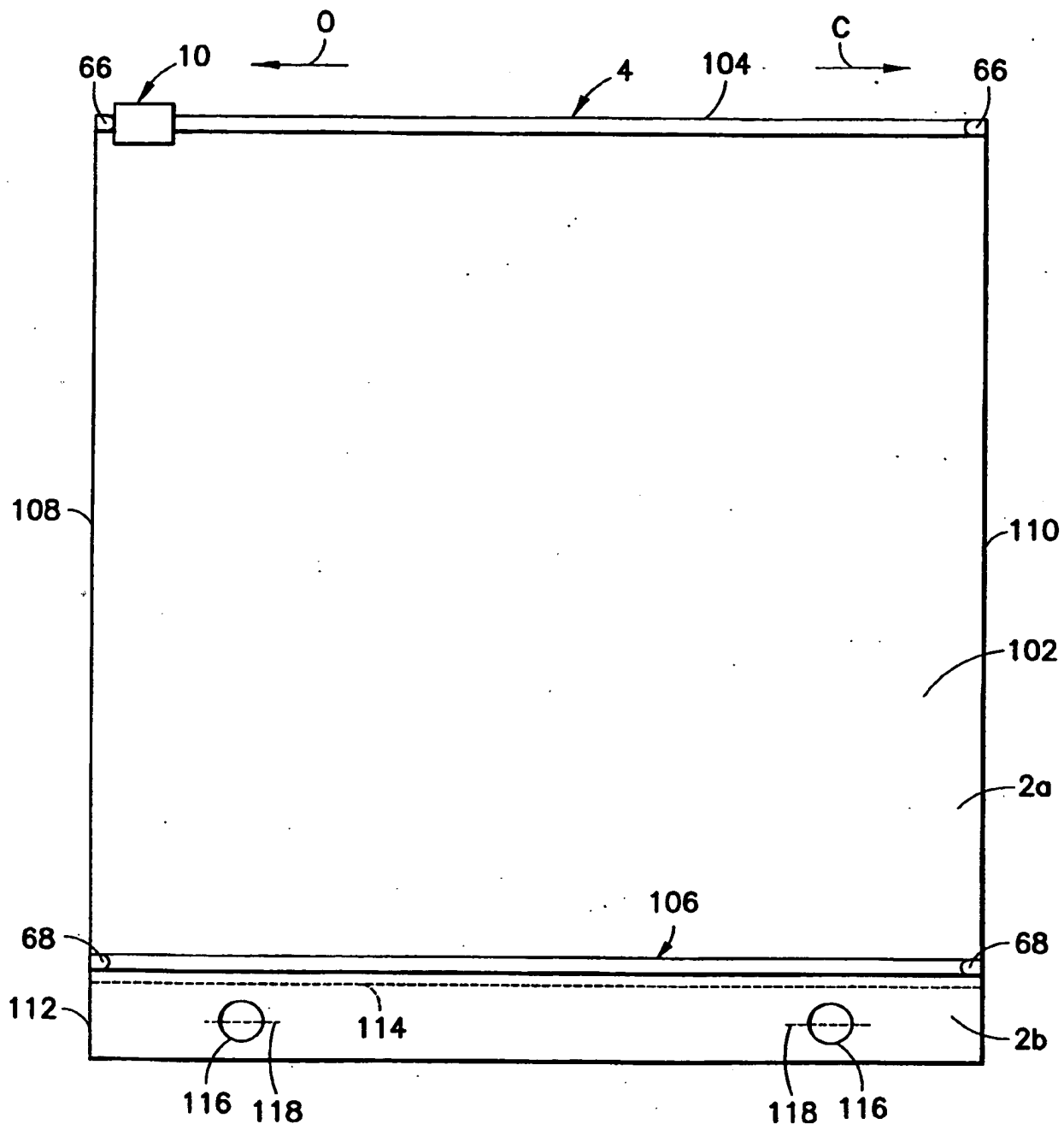


FIG. 1

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Approved

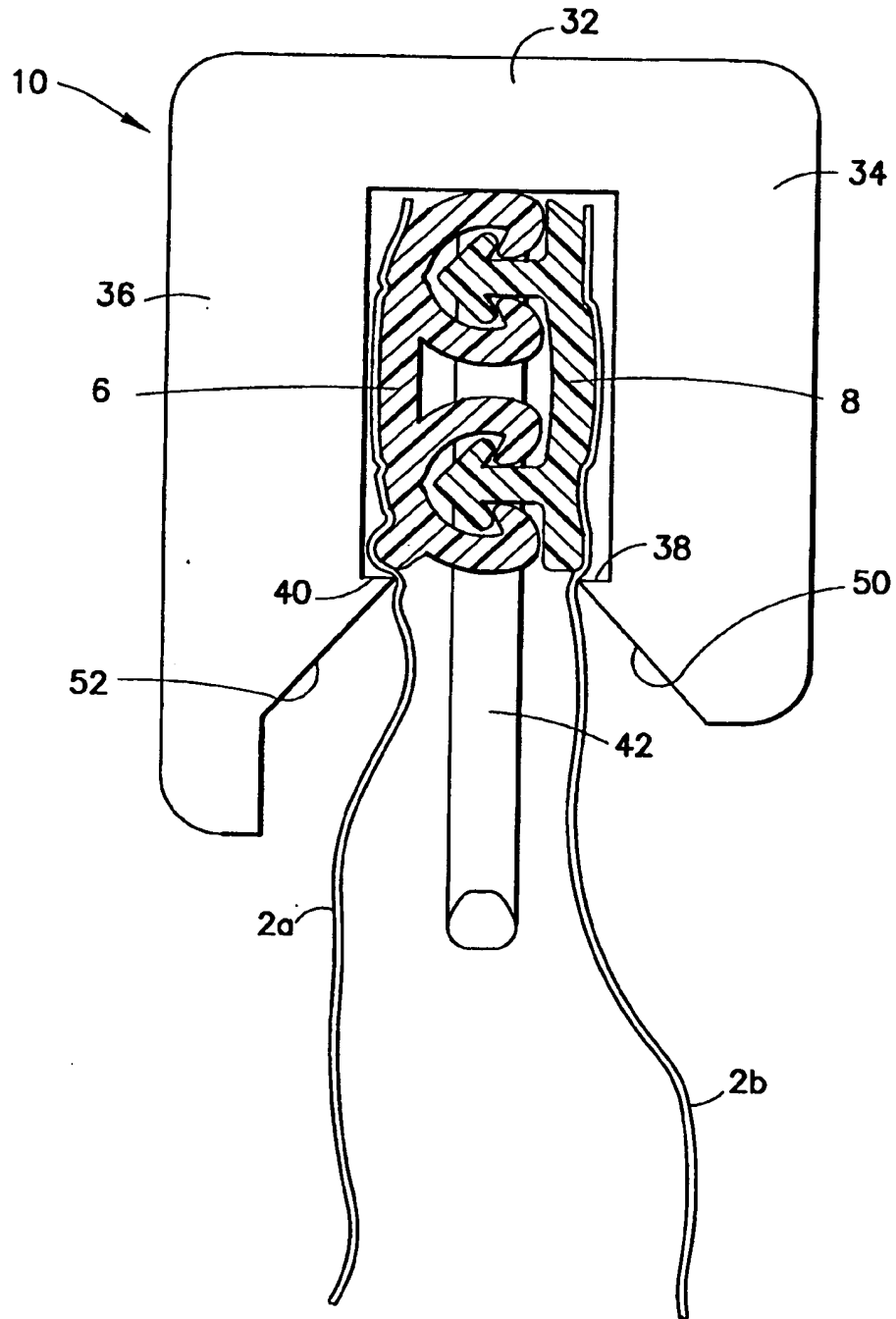


FIG. 3